Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

January Term, 1979
No. 78-1318

HELEN B. O'BANNON, Secretary of Public Welfare,
Petitioner

v.

TOWN COURT NURSING CENTER et al.,
Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITIONER'S REPLY MEMORANDUM

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PETITIONER'S REPLY MEMORANDUM

I. PETITIONER HAS PROPERLY INVOKED THIS COURT'S JURISDICTION

Respondents argue that Petitioner may not properly invoke this Court's jurisdiction because Petitioner never appealed or cross-appealed from the District Court order. Brief in Opposition at 10. This argument apparently confuses the Court of Appeals' decision in this case with the decision in its companion, *Town Court v. Beal,* 586 F.2d 266 (3rd Cir. 1978) *("Town Court I")*, and completely misperceives Petitioner's status in this case.

In *Town Court I,* Secretary Califano chose to appeal from that portion of the District Court's ruling that required him to pay for all services provided by Town Court prior to the District Court's order dissolving the injunction. *Town Court, supra* at 279. Petitioner, on the other hand, chose not to appeal from that aspect of the order, was not a participant in that appeal, and does not seek to have that ruling reviewed here.

Respondents, however, did take a separate appeal from the District Court's refusal to grant the injunctive relief which they sought against Petitioner. Thus, the Petitioner was appellee in that proceeding. *Town Court v. Beal,* 586 F.2d 280 (3rd Cir. 1978) *("Town Court II")*. In *Town Court II* the Court of Appeals vacated the District Court's ruling and held that the patients had

a due process right to notice and hearing before the facility could be terminated as a provider of skilled nursing home services under Medicare or Medicaid. *Town Court v. Beal,* 586 F.2d 280, 283 (29a). In Petitioner's view that important ruling is erroneous and, as appellee below, it is entirely proper for the Petitioner to seek review of that ruling in this Court.

II. PROPOSED FEDERAL REGULATIONS WILL HAVE NO IMPACT ON THIS CONTROVERSY

Respondents contend that recently proposed rulemaking by H.E.W., if adopted, would greatly alter the framework of this dispute. Respondents have, however, misconstrued these proposed rules which, in fact, will have no bearing whatsoever on the patients' due process rights in the termination process.

The lower court held that skilled nursing home patients were entitled to some form of notice and hearing, and that these procedures must be afforded prior to the termination of that nursing home's Medicare or Medicaid provider status. The proposed rules require no such procedures, pre- or post-termination. In fact, the regulations only require that, upon request, the provider *and not the patients,* be provided with an evidentiary hearing within 120 days *after* the termination or an informal reconsideration procedure prior to the termination. 44 Fed. Reg. 9753 (1979) (to be codified in 42 C.F.R. 431(D)). In short these proposed rules completely ignore the lower court's ruling in this case and correctly recognize that the

patients do not have a valid role in the process of terminating a Medicaid provider. Thus, viewed in the proper light this proposed action by the federal government underscores the need for review of the lower court's decision in this case.

CONCLUSION

Based upon the foregoing, as well as the Petition for Writ of Certiorari, it is respectfully urged that the Petition be granted and this case set for oral argument.

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